

In the House of Representatives, U. S.,

June 13, 1994.

Resolved, That the bill from the Senate (S. 1904) entitled “An Act to amend title 38, United States Code, to improve the organization and procedures of the Board of Veterans’ Appeals”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Board of Veterans’ Ap-*
3 *peals Administrative Procedures Improvement Act of*
4 *1994”.*

5 ***SEC. 2. NUMBER OF MEMBERS OF BOARD OF VETERANS’***

6 ***APPEALS.***

7 *Section 7101(a) of title 38, United States Code, is*
8 *amended by striking out “(not more than 65)”.*

9 ***SEC. 3. ETHICAL AND LEGAL LIMITATIONS ON CHAIRMAN.***

10 *Section 7101(b)(1) of title 38 United States Code, is*
11 *amended by inserting after the first sentence the following*
12 *new sentence: “The Chairman shall be subject to the same*
13 *ethical and legal limitations and restrictions concerning in-*
14 *volvement in political activities as apply to judges of the*
15 *United States Court of Veterans Appeals.”.*

1 **SEC. 4. ACTING AND TEMPORARY MEMBERS OF BOARD OF**
2 **VETERANS' APPEALS.**

3 (a) *IN GENERAL.*—Subsection (c) of section 7101 of
4 title 38, United States Code, is amended—

5 (1) by striking out paragraph (1) and inserting
6 in lieu thereof the following:

7 “(c)(1)(A) The Chairman may from time to time des-
8 ignate one or more employees of the Department to serve
9 as acting members of the Board. Except as provided in sub-
10 paragraph (B), any such designation shall be for a period
11 not to exceed 90 days, as determined by the Chairman.

12 “(B) An individual designated as an acting member
13 of the Board may continue to serve as an acting member
14 of the Board in the making of any determination on a pro-
15 ceeding for which the individual was designated as an act-
16 ing member of the Board, notwithstanding the termination
17 of the period of designation of the individual as an acting
18 member of the Board under subparagraph (A) or (C).

19 “(C) An individual may not serve as an acting mem-
20 ber of the Board for more than 270 days during any one-
21 year period.

22 “(D) At no time may the number of acting members
23 exceed 20 percent of the total of the number of Board mem-
24 bers and acting Board members combined.”;

25 (2) by striking out paragraph (2);

3 (4) in paragraph (2), as so redesignated, by
4 striking out “the number of temporary Board mem-
5 bers” and all that follows through the period at the
6 end and inserting in lieu thereof “the number of act-
7 ing members of the Board designated under such
8 paragraph (1) during the year for which the report
9 is made.”.

10 (b) CONFORMING AMENDMENTS.—(1) Subsection (e) of
11 such section is amended by striking out “a temporary or”
12 and inserting in lieu thereof “an”.

13 (2) Subsection (d)(3)(B) of such section is amended by
14 striking “section 7103(d)” and inserting in lieu thereof
15 “section 7101(a)”.

16 **SEC. 5. CHAIRMAN'S ANNUAL REPORT ON BOARD ACTIVI-**
17 **TIES.**

18 *Section 7101(d)(2) of title 38, United States Code, is*
19 *amended—*

20 (1) by striking out “and” at the end of subpara-
21 graph (D);

22 (2) by striking out the period at the end of sub-
23 paragraph (E) and inserting in lieu thereof “; and”;
24 and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(F) the number of employees of the Department
4 designated under subsection (c)(1) to serve as acting
5 members of the Board during that year and the num-
6 ber of cases in which each such member participated
7 during that year.”.

8 **SEC. 6. DECISIONS BY THE BOARD.**

9 (a) ACTION BY BVA.—Sections 7102 and 7103 of title
10 38, United States Code, are amended to read as follows:

11 **“§ 7102. Assignment of members of Board**

12 “(a) A proceeding instituted before the Board may be
13 assigned to an individual member of the Board or to a
14 panel of not less than three members of the Board. A mem-
15 ber or panel assigned a proceeding shall make a determina-
16 tion thereon, including any motion filed in connection
17 therewith. The member or panel, as the case may be, shall
18 make a report under section 7104(d) of this title on any
19 such determination, which report shall constitute the final
20 disposition of the proceeding by the member or panel.

21 “(b) A proceeding may not be assigned to the Chair-
22 man as an individual member. The Chairman may partici-
23 pate in a proceeding assigned to a panel or in a reconsider-
24 ation assigned to a panel of members.

1 **“§ 7103. Reconsideration; correction of obvious errors**

2 “(a) The decision of the Board determining a matter
3 under section 7102 of this title is final unless the Chairman
4 orders reconsideration of the decision in accordance with
5 subsection (b). Such an order may be made on the Chair-
6 man’s initiative or upon motion of the claimant.

7 “(b)(1) Upon the order of the Chairman for reconsider-
8 ation of the decision in a case, the case shall be referred—

9 “(A) in the case of a matter originally heard by
10 a single member of the Board, to a panel of not less
11 than three members of the Board; or

12 “(B) in the case of a matter originally heard by
13 a panel of members of the Board, to an enlarged
14 panel of the Board.

15 “(2) A panel referred to in paragraph (1) may not
16 include the member, or any member of the panel, that made
17 the decision subject to reconsideration.

18 “(3) A panel reconsidering a case under this subsection
19 shall render its decision after reviewing the entire record
20 before the Board. The decision of the panel shall be made
21 by a majority vote of the members of the panel. The decision
22 of the panel shall constitute the final decision of the Board.

23 “(c) The Board on its own motion may correct an ob-
24 vious error in the record, without regard to whether there
25 has been a motion or order for reconsideration.”.

1 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 2 *the beginning of chapter 71 of such title is amended by*
 3 *striking out the item relating to section 7103 and inserting*
 4 *in lieu thereof the following:*

“7103. Reconsideration; correction of obvious errors.”.

5 ***SEC. 7. PROCEDURES RELATING TO APPEALS.***

6 (a) *IN GENERAL.*—(1) *Section 7107 of title 38, United*
 7 *States Code, is amended to read as follows:*

8 ***“§ 7107. Appeals: dockets; hearings***

9 *“(a)(1) Each case received pursuant to application for*
 10 *review on appeal shall be considered and decided in regular*
 11 *order according to its place upon the docket.*

12 *“(2) A case referred to in paragraph (1) may, for cause*
 13 *shown, be advanced on motion for earlier consideration and*
 14 *determination. Any such motion shall set forth succinctly*
 15 *the grounds upon which it is based and may not be granted*
 16 *unless the case involves interpretation of law of general ap-*
 17 *plication affecting other claims or for other sufficient cause*
 18 *shown.*

19 *“(b) The Board shall decide any appeal only after af-*
 20 *fording the appellant an opportunity for a hearing.*

21 *“(c) A hearing docket shall be maintained and formal*
 22 *recorded hearings shall be held by such member or members*
 23 *of the Board as the Chairman may designate. Such member*
 24 *or members designated by the Chairman to conduct the*
 25 *hearing shall, except in the case of a reconsideration of a*

1 *decision under section 7103 of this title, participate in mak-*
2 *ing the final determination of the claim.*

3 “(d)(1) *An appellant may request that a hearing before*
4 *the Board be held at its principal location or at a facility*
5 *of the Department located within the area served by a re-*
6 *gional office of the Department.*

7 “(2) *A hearing to be held within an area served by*
8 *a regional office of the Department shall (except as provided*
9 *in paragraph (3)) be scheduled to be held in the order in*
10 *which requests for hearings within that area are received*
11 *by the Department.*

12 “(3) *In a case in which the Secretary is aware that*
13 *the appellant is seriously ill or is under severe financial*
14 *hardship, a hearing may be scheduled at a time earlier than*
15 *would be provided for under paragraph (2).*

16 “(e)(1) *At the request of the Chairman, the Secretary*
17 *may provide suitable facilities and equipment to the Board*
18 *or other components of the Department to enable an appel-*
19 *lant located at a facility within the area served by a re-*
20 *gional office to participate, through voice transmission or*
21 *through picture and voice transmission, by electronic or*
22 *other means, in a hearing with a Board member or mem-*
23 *bers sitting at the Board’s principal location.*

24 “(2) *When such facilities and equipment are available,*
25 *the Chairman may afford the appellant an opportunity to*

1 *participate in a hearing before the Board through the use*
 2 *of such facilities and equipment in lieu of a hearing held*
 3 *by personally appearing before a Board member or panel*
 4 *as provided in subsection (d). Any such hearing shall be*
 5 *conducted in the same manner as, and shall be considered*
 6 *the equivalent of, a personal hearing. If the appellant de-*
 7 *clines to participate in a hearing through the use of such*
 8 *facilities and equipment, the opportunity of the appellant*
 9 *to a hearing as provided in such subsection (d) shall not*
 10 *be affected.”.*

11 *(2) The item relating to section 7107 in the table of*
 12 *sections at the beginning of chapter 71 of such title is*
 13 *amended to read as follows:*

“7107. Appeals: dockets; hearings.”.

14 *(b) CONFORMING AMENDMENTS.—(1) Section 7104(a)*
 15 *of such title is amended by striking out the third sentence.*

16 *(2) Section 7110 of such title is repealed.*

17 *(3) The table of sections at the beginning of chapter*
 18 *71 of such title is amended by striking out the item relating*
 19 *to section 7110.*

20 ***SEC. 8. CROSS-REFERENCE CORRECTION.***

21 *Section 7104(a) of title 38, United States Code, is*
 22 *amended by striking out “211(a)” and inserting in lieu*
 23 *thereof “511(a)”.*

1 **SEC. 9. REVISION TO INCOME VERIFICATION REQUIRE-**
 2 **MENTS.**

3 (a) *PARENTS DIC.*—Section 1315(e) of title 38, United
 4 States Code, is amended—

5 (1) in the first sentence—

6 (A) by striking out “shall” and inserting in
 7 lieu thereof “may”; and

8 (B) by striking out “each year” and insert-
 9 ing in lieu thereof “for a calendar year”; and

10 (2) in the second sentence—

11 (A) by striking out “file with the Secretary
 12 a revised report” and inserting in lieu thereof
 13 “notify the Secretary”; and

14 (B) by striking out “the estimated”.

15 (b) *PENSION.*—Section 1506 of such title is amended—

16 (1) in paragraph (2)—

17 (A) by striking out “shall” and inserting in
 18 lieu thereof “may”; and

19 (B) by striking out “each year” and insert-
 20 ing in lieu thereof “for a calendar year”; and

21 (2) in paragraph (3)—

22 (A) by striking out “file a revised report”
 23 and inserting in lieu thereof “notify the Sec-
 24 retary”;

25 (B) by striking out “estimated” each place
 26 it appears; and

- 1 *(C) by striking out "such applicant's or re-*
- 2 *cipient's estimate of".*

Attest:

Clerk.

103D CONGRESS
2D SESSION

§. 1904

AMENDMENT